Testimony in Support of *An Act to Amend*
the Maine Indian Claims Settlement Implementing Act and Enact Provisions of Law
Regarding the Application of Federal Laws Beneficial to the Wabanaki Nations

Hon. Clarissa Sabattis, Chief, Houlton Band of Maliseet Indians
Joint Standing Committee on Judiciary, Maine State Legislature
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I. The Houlton Band of Maliseet Indians.

Woli-sepawiw Senator Carney, Representative Moonin and esteemed members of the Joint standing committee on Judiciary, Nil T'liwis Clarissa Sabattis, I am the Chief of the Houlton Band of Maliseet Indians, a federally recognized Indian tribe with approximately 2000 tribal citizens located in Aroostook County, Maine. We are a riverine people who have fished, hunted, gathered aquatic and wetland plants for food and basket weaving, and used the rivers and streams of our ancestral territory for ceremonial purposes since time immemorial. We call ourselves Wolastoqewiyik or "People of the Beautiful, Flowing River." The "Wolastoq," the River of our name, is also known as the St. John, and is bisected by the international boundary with Canada. Our Band are "Metahksoniqewiyik" or People of the Meduxnekeag River, a tributary of the Wolastoq-St. John that flows through the Town of Houlton, ME.

Our unique tribal culture and traditions are intertwined with our environment. Our tribal citizens and our ancestors have camped; fished for sea run fish such as alewives, American eel, blueback herring, Atlantic salmon, and shad;

and gathered ash for baskets and fiddleheads (emerging ostrich fern) for food along the Meduxnekeag and other tributaries of the Wolastoq-St. John for generations. Historically we are also renowned birch bark canoe builders. Our homelands, filled with the productive soils that now grow potatoes, once grew the biggest and best canoe birches. With these light, flexible, sturdy craft we traveled the rivers and streams of the Wolastoq-St. John watershed to reach our hunting grounds and to portage to streams and rivers in other watersheds. Evidence of prehistoric activities at least as old as 8,000 years exists in fields along the Meduxnekeag. A critical priority of our tribe is to maintain the natural environment that supports the fish, animals, and plants on our lands and waters in order to preserve and protect our culture and traditions, common welfare, and the health of our Maliseet citizens who sustain themselves with those resources.

The Houlton Band of Maliseet Indians' government-to-government relationship with the United States dates to the earliest days of our republic. Our Maliseet Nation, also known as the St. John's Indians, were signatory to the very first treaty entered by the United States – the Treaty of Watertown on July 19, 1776, just 15 days after the Declaration of Independence. Our Maliseet ancestors and those of the Mi'kmaqs agreed to send 600 of our warriors to fight alongside General Washington against Great Britain, and the United States solemnly

promised to protect and provide for us. More than 200 years later, Congress confirmed our status as a federally recognized tribe in the Maine Indian Claims Settlement Act (MICSA), Pub. L. No. 96-420 (1980). The Houlton Band is "acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of [our] government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes." 86 Fed. Reg. 7554 (Jan. 29, 2021). We are one of the four federally recognized Wabanaki Nations, along with the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation.

Despite the 1776 Treaty of Watertown and the 1790 Nonintercourse Act (An Act to Regulate Trade and Intercourse with the Indian Tribes), which prohibited any sale or transfer of Indian lands to a state or person unless the sale or transfer was ratified through a treaty with the United States, we were unlawfully dispossessed of our lands. Beginning around 1870, the State of Maine encouraged the non-Indian settlement of Aroostook County by offering land to non-Indian settlers at bargain prices. These settlers occupied our traditional hunting and fishing grounds and gradually excluded us from our Maliseet aboriginal territory, which originally spanned more than one million acres. Thus, while we had neither signed a treaty ceding our lands to Massachusetts or Maine nor voluntarily left our

lands, by the middle of the twentieth century we were landless and were treated as "squatters" in our own homeland. In MICSA, Congress provided the Houlton Band just $900,000 to reacquire lands and natural resources along the Meduxnekeag River where we could rebuild our community and preserve our traditional riverine way of life. *See, e.g.,* S. Rep. No. 96-957 at 11, 24; H.R. Rep. No. 96-1353 (Report of the Dep't of the Interior, Aug. 25, 1980); Pub. L. No. 96-420, §5(d) (formerly codified at 25 U.S.C. § 1724(d)). We have reestablished our community near one of the best fishing holes in the river; brown ash and fiddlehead ferns grow in abundance along the floodplains; harvesting fiddlehead ferns in the spring for food and as a spring tonic continues to be a very important traditional practice; and making beautiful, sturdy woven baskets from brown ash is a strong and vital part of our enduring culture.

II. Beneficial Federal Law are Critical to the Self-Government and Self-Determination of the Wabanaki Nations' and to the Health and Welfare of Wabanaki Citizens.

As Chief of the Houlton Band of Maliseet Indians, I stand firmly alongside the other Wabanaki Nations and unanimously support *An Act to Amend the Maine Indian Claims Settlement Implementing Act and Enact Provisions of Law*

Regarding the Application of Federal Laws Beneficial to the Wabanaki Nations. This bill would ensure that our Nations receive equal treatment – with 570 other federally recognized tribes nationwide – under laws passed by Congress for the benefit of Indians. This is a small request, but it is an incredibly important one.

While the fundamental purpose of MICSA in 1980 was to settle the Wabanaki Nations' claims to our historic lands in Maine, MICSA also imposed a restrictive jurisdictional model, granting the State of Maine broad civil and criminal jurisdiction, including civil regulatory authority, over the Wabanaki Nations, our citizens, and our reservation and trust lands, unlike the rest of Indian Country. But MICSA went even further, denying to our Nations and our citizens the benefits of any federal Indian law passed by Congress that might "affect or preempt" state jurisdiction, including both statutes enacted *before* 1980 and statutes enacted *after* MICSA's passage. Pub. L. No. 96-420, §§6(h), 16(b) (formerly codified at 25 U.S.C. §§1725(h), 1735(b)). Section 16(b) provides:

> The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or

> held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

Since 1980, Congress has enacted more than 150 laws generally applicable to Indian tribes, native people, and Indian lands, but many of these laws "affect or preempt" the application of Maine law in some way. Section 16(b) of MICSA has thus had a devastating effect on the Wabanaki Nations' ability to pursue economic development opportunities, provide governmental services to our communities, access federal programs and funding, and protect our natural resources under a host of federal laws enacted by Congress for the benefit of Indians. Here are a few examples.

Under the Stafford Act, the Wabanaki Nations have been denied the authority that other tribes have to directly request a disaster or emergency declaration from the President in response to natural disasters and public health emergencies in our communities. This denies us the ability to directly access critical federal funding to respond to emergencies like the opioid epidemic. As a Registered Nurse, I am painfully aware that immediate access to drug treatment

can be the difference between life and death. I truly can't imagine that anyone in Congress in 1980 ever imagined or intended that MICSA would threaten the Maliseet people with such harm. Another example is the Violence Against Women Reauthorization Act of 2013 (VAWA), which authorized Indian tribes to prosecute non-Indian defendants for certain domestic violence crimes against tribal members. Because VAWA affected state jurisdiction, the State of Maine took the position that the Wabanaki Nations could not pursue this jurisdiction – jurisdiction that Congress specially found necessary to fill a public safety gap in Indian Country that led to alarming rates of violence against native women and children. Nor are the Wabanaki Nations eligible for treatment as a state (TAS status) under environmental laws such as the Clean Water Act. This lack of authority has hampered our decades-long efforts (discussed further below) to improve water quality and to restore native salmon populations to the Meduxnekeag River, which are especially significant to Maliseet sustenance, spiritual, and ceremonial cultural practices.

MICSA's restriction on the application of beneficial federal laws to the Wabanaki Nations makes it very challenging on a day-to-day basis to exercise our basic governmental functions and to develop new tribal institutions. Like any government, our tribe must make difficult decisions about how to allocate its

limited financial and staff resources to best serve our community. There are scores of federal statutes that recognize a key role for tribal governments in administering federal programs, including in the areas of health care, law enforcement and public safety. But we cannot confidently pursue, invest in, and staff these programs because we don't know whether – or when – the State may challenge our authority to administer the programs due to some effect on state jurisdiction. As a result, for decades we have watched tribes across the country celebrate laws enacted by Congress that promote tribal self-government, self-determination, and economic development in a host of ways, but we have watched from the sidelines, knowing that MICSA denies us an equal opportunity to exercise our rights of self-determination and self-government. With the passage of this bill, we would be guaranteed that certainty. We could devote our time and resources to solving the problems that Congress has decided must be addressed in Indian County, instead of wondering whether MICSA denies us the right to solve them. And we would finally put an end to costly litigation with the State over whether our tribe can access the benefits of new Indian laws passed by Congress.

Depriving our tribe of access to the full range of programs, services, and authorities that Congress has provided to help build strong tribal governments and thriving native communities has very real consequences. The Harvard Project on

American Indian Economic Development's December 2022 research report *Economic and Social Impacts of Restrictions on the Applicability of Federal Indian Policies to the Wabanaki Nations in Maine* (Wabanaki Nations Report), found that Maine Indian policy is an extreme outlier and that by denying to the Wabanaki Nations full access to federal Indian self-determination law, MICSA has had negative economic and social impacts on our Nations, citizens, and rural Maine communities. As a result, Mainers have not witnessed the Wabanaki Nations experiencing the same success—economic growth, rising per capita income, and robust governmental services—as the rest of the United States has witnessed in Indian Country. Instead, the Harvard Project found that while the real income of native people on Indian reservations in the Lower 48 states *outside of Maine* have increased by more than 61% since 1989, the real income of Wabanaki Nation citizens has increased by only 9%. The Harvard Project also found that by enabling our Nations to fully access beneficial federal Indian laws, the State would enjoy substantial economic benefits, including $330 million in new GDP, more than 2,700 new jobs for non-Indians and Indians alike, and $39 million in new State and local tax revenues. This Legislature should seize the opportunity to secure these benefits and to make things right—not just for Wabanaki people, but for all Mainers.

The negative effects of denying to the Wabanaki Nations access to federal laws that support strong tribal governments and economies have hit home in our Maliseet community. According to a 2010 study, Maliseet citizens lag well behind other Mainers in employment, income (72% of our citizens had an annual household income of less than $25,000, compared to only 33% of non-Indians), and other public health indicators, including depression, alcoholism, and diabetes. Four of the five tribal reservations sit within the two rural counties that garner the lowest socioeconomic rankings in Maine.

This is a narrow bill. It makes the Wabanaki Nations eligible to enjoy the same benefits and to exercise the same authority as 570 other federally recognized tribes under laws enacted by Congress. It does not make the general body of federal common law – known as federal Indian law – applicable in Maine. And it does not change the overall jurisdictional framework of MICSA, under which the State exercises broad jurisdiction over the Wabanaki Nations and our lands. It *only* withdraws State jurisdiction to the *limited extent* that it prevents the Wabanaki Nations from accessing federal laws enacted for the benefit of Indians. For 43 years, our Nations – unique among more than 550 federally recognized tribes – have been denied access to all beneficial federal laws that may "affect or preempt" the application of State law to the Nations, our citizens, and our lands. It is time to

fix this inequality. We cannot undo the past, but we can create a better future for our future generations of Maliseet citizens. By withdrawing State jurisdiction in these limited areas, the bill will clarify that there is no barrier to ourWabanaki Nations having the same access to federal laws as other tribes.

It is important to emphasize two areas of state authority that this bill will not change in any way. First, this bill will not affect the State's current jurisdiction over crimes or juvenile crimes in any way. Second, this bill will not affect the State's jurisdiction to regulate gaming by the Wabanaki Nations and expressly excludes application of the federal Indian Gaming Regulatory Act (IGRA). Our Nations have been working collaboratively with the State Legislature and Governor's Office to create opportunities that will enable us to share in the economic benefits from gaming – benefits that we have been excluded from for too long. Currently, the State only allows two non-Indian corporations to conduct Las Vegas-style gaming in Maine, from which they derive tens of millions of dollars in profits each year. Our Nations, however, will have the exclusive ability to offer mobile sports betting to the Maine public. We are looking forward to "going live" with sports betting this fall and to creating additional gaming opportunities in the future to support state and tribal government services.

The Houlton Band is committed to continuing its work with the State to achieve win-win outcomes for the state-tribal jurisdictional relationship, including through state legislation that recognizes the crucial role of sovereign tribal governments in providing services, infrastructure, and economic development for the benefit of all Mainers, particularly in rural communities. *An Act to Amend the Maine Indian Claims Settlement Implementing Act and Enact Provisions of Law Regarding the Application of Federal Laws Beneficial to the Wabanaki Nations* will help to advance these efforts. It will give us new tools to govern our citizens and our lands and new revenue streams to provide government services and infrastructure in our communities. From now on, when Congress is considering Indian legislation, we will be able to prepare to implement the new law without wondering if the State will later challenge our ability to do so.

Despite our inability to access the full range of benefits provided to Indian tribes under federal statutes, we have worked hard to build our governmental capacity and to exercise our right of self-government for the benefit of neighboring communities. For example, the Houlton Band has recently donated a police cruiser to the Town of Houlton and donated new snow rescue equipment for emergency medical services in the Town of Littleton; helped secure grant funding for road improvements and a large culvert replacement to provide access to a major

employer in Houlton (Tate & Lyle Ingredients) and fish passage on an important tributary of the Meduxnekeag River; partnered with the Town of Houlton on a $15M road improvement project; and is working closely with the Houlton Water Company on water and wastewater infrastructure improvement projects serving Maliseet trust lands. And for more than 30 years the Band has been engaged in comprehensive efforts to restore the Meduxnekeag River watershed and restore native fish species, including reducing contamination from legacy pollutants such as arsenic and DDT, planting riparian buffers, helping farmers implement best agricultural management practices, completing more than five miles of instream habitat restoration, and partnering with the local Conservation District. This bill will enhance our ability to advance all of these governmental partnerships by enabling the Band to participate fully in services, programs, and funding opportunities created by future Congresses.

III. Conclusion.

On behalf of the Houlton Band of Maliseet Indians, I urge you to support the *An Act to Amend the Maine Indian Claims Settlement Implementing Act and Enact Provisions of Law Regarding the Application of Federal Laws Beneficial to the Wabanaki Nations*. Each year Congress enacts legislation that gives tribal

governments new tools to protect our citizens, create jobs and economic opportunities, and provide health care, housing, and other essential services to our tribal communities and non-Indian neighbors. We are only asking for basic fairness – to have the same equal access to these programs as the other 570 federally recognized tribes.